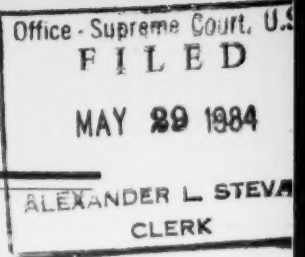


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No. 83-1744



**In the
Supreme Court of the United States**

OCTOBER TERM, 1983

**DEFELICE MARINE CONTRACTORS, INC.,
Individually and as a Division of
GULF FLEET MARINE OPERATIONS, INC.**

Petitioner

versus

JAMES A. RAY,

Respondent

**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS,
FIFTH CIRCUIT, STATE OF LOUISIANA**

**OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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May, 1984

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JURISDICTION

Respondent, with respect, objects to the present jurisdiction of this Court based on the fact that this matter is still proceeding in the Courts of the State of Louisiana. Trial on the merits of this matter is presently set for June 20, 1984, and therefore, there has been no final determination with respect to the merits of this claim to date. Furthermore, this Petition for Certiorari is contrary to Rule 20 of the Supreme Court Rules in that there has been no showing of "imperative public importance" to warrant immediate settlement in this Court.

STATEMENT OF THE CASE

There are a number of areas which, it is respectfully submitted, must be clarified. The bulk of the objections to the petitioner's statement of the case are, in fact, relative to the merits of this claim, but in an abundance of caution at this point, respondent would state:

On page 2 of the Petition for Certiorari, petitioner states that,

"Ray subsequently initiated settlement negotiations with petitioner. Furthermore, the negotiations culminated in a settlement whereby Ray agreed to release his legal rights against petitioner..."

In reality, however, there were *no negotiations*. Mr. Ray was presented with a take-it-or-leave-it-offer by the representative of petitioner. Even house counsel for petitioner admitted that,

"it was not a negotiated process". (See p. 81 of the trial transcript, day "2")

Similarly, the petitioner has suggested that a part of the consideration of the settlement was the promise of continued employment. (See p. 2 of Petition for Certiorari) In reality, there was no promise made of a lifetime job, whatsoever, and according to the transcript of the purported settlement proceedings, if Mr. Ray were discharged, fired, or terminated, the settlement would still be binding. (See appendix "D"; record at pp. 677, 678)

Finally, and most importantly, respondent objects to

the assertion made by petitioner that the decision of the appellate court was based primarily on the testimony of Dr. Skinner. (See p. 3 of Petition for Certiorari) Rather, it is respectfully submitted, that the Court's decision was based on the totality of the circumstances which evidenced the fact that Ray did not have a full understanding of his rights. (See Appendix "C" to the Petition for Certiorari, p. A-10) The totality of the circumstances considered by the Court of Appeal included the fact that Mr. Ray at the time of the purported settlement was, indeed, unrepresented by an attorney of his choosing, there was no negotiation as is common in this type of procedure, there was no judicial approval obtained, although access to said approval was, in fact, available, and the consideration afforded for the severe injuries sustained by Mr. Ray was sorely inadequate as is reflected in the Court's opinion in Appendix "C" of the Petition for Certiorari, p. A-9; wherein it is stated,

"Coupled with these factors is the realization Ray released his rights for a very serious injury which, pending proof of liability and numerous other factors, could be valued at a sum several times more than the settlement."

Again, respondent respectfully submits that the "emotional understanding" issue which the petitioner has sought to have reviewed by this Court is, in fact, merely one of many factors which led the Court of Appeals to set aside the purported release and to allow Mr. Ray to present his case in Court and prove, if possible, the degree and extent of damages which were, in fact, sustained.

REASONS FOR DENYING THE WRIT

The foremost reason for denying the writ applied for

by Petitioner, in this matter, is the fact that, at this point, the matter is still pending in the lower courts and no judgment has, in fact, been rendered. In the classic sense, this matter is, therefore, not ripe for determination by the United States Supreme Court.

Certainly, subsequent to the rendition of a judgment against the petitioner and after the appropriate appeals in the lower courts, there will be the opportunity to review the issues presented in this Petition for Certiorari.

The petitioner's attempt to suggest that the decision rendered in this case is "disruptive of the uniformity of the Federal Maritime Law and, therefore, serves as a disincentive for seamen to resolve disputes amicably" is clearly in error. Rather, this decision affirms the long standing tradition of protection for seamen and further affirms the shipowner's responsibility to insure a *full* understanding of one's rights prior to entering into settlement negotiations.

As stated previously, this matter is set for trial on June 20, 1984. At that time the District Court will have the opportunity to judge the merits of this claim. Clearly, the petitioner is entitled to a credit for the amount previously paid in settlement, but for some reason petitioner is concerned that the judgment rendered will be in excess of the amount previously tendered. As such, petitioner is doing all in its power to deny Mr. Ray his day in court. Such a result would fly in the face of this Court's traditional stand relative to seamen's releases and would certainly not be a service to seamen as petitioner has artfully suggested.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel of Record for Respondent

OF COUNSEL:
GAUTHIER, MURPHY, SHERMAN, McCABE
& CHEHARDY

CERTIFICATE OF SERVICE

I, T. Peter Breslin, a member of the Bar of this Court, certify that on this 25th day of May, 1984, three copies of this Opposition to Petition for a Writ of Certiorari were mailed first class, postage prepaid, to George W. Healy, III, 1300 Hibernia Bank Building, New Orleans, Louisiana 70112, counsel for the petitioner. I further certify that all parties required to be served have been served.

T. PETER BRESLIN